IN THE

# Supreme Court of the United States

**October Term 1945**

**No. 340**

SANTO GRASSO,

*Petitioner,*

*against*

OIVIND LORENTZEN, Director of Shipping and Curator for the ROYAL NORWEGIAN GOVERNMENT, operating as a NORWEGIAN SHIPPING & TRADE MISSION,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDGAR R. KRAETZER,
*Counsel for Respondent.*

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### State of the Case and Theory of the Action as Presented Below

Petitioner bases his argument on the suggestion that the courts below deprived him of relief that he now states was predicated upon a claim of unseaworthiness.

In his pleadings, petitioner's action is predicated upon a failure to provide proper tools, appliances, etc., and hence is predicated upon negligence. See Article Fourteenth of the libel (ff. 8-10). The only suggestion of a claim of unseaworthiness is in the 13th Answer to Interrogatories (f. 38), referring to a part of the equipment, *i. e.*, a snatch block which, under the proof on the trial, was not involved in the accident. Any references to rules of proof

in admiralty with regard to questions of seaworthiness are therefore irrelevant. The case was neither presented before the Trial Judge nor to the Appellate Court on any theory of unseaworthiness.

Petitioner's repeated references to the Appellate Court's single inadvertent use of the word "plaintiff" is reprehensible in the extreme.

## Supplementary Statement of Facts

Proof at the trial established that the strap in question was adequate when the stevedores began to use it, that it was bent sharply back over the 5/8-inch cutting edge of a structural plate (ff. 152-153), that it was particularly susceptible to being severed (ff. 153-154), that it was an imperative and established custom for the longshoremen to make periodic inspections during the use of such a strap (f. 155), that no prior or intermediate inspection was made by the longshoremen (ff. 208, 212-213), that the strap survived its use for two days (ff. 206, 211, 239) to shift some 15 or 16 crates weighing from 4 to 7 tons (f. 291), and that when examined after the accident it appeared as though "cut" (ff. 256, 283).

## The Findings and Ruling of the Courts Below

On conflicting proof the courts below properly found that the accident occurred, not through the negligence of the shipowner, but because of the negligence of libelant's employer in failing to make the frequent, customary inspections entailed by the nature of the equipment, its use and its inherent susceptibility to failure. There was no finding that the libelant assumed the risk.

## The Decisions Below Were Correct

Both the Trial Court and the Appellate Court decided the question of fact in favor of the respondent, the Trial Court finding that the accident occurred through failure of the longshoremen to make the customary and necessary inspections of the apparatus employed, the Appellate Court in addition pointing out that because of the undisputed history of prior use of the apparatus libelant had failed to prove that the strap was initially unsafe and unfit for use.

No such questions of law as are now proposed by petitioner were involved in the proper determination of this cause, and the petition should be denied.

Respectfully submitted,

EDGAR R. KRAETZER,
*Counsel for Respondent.*

LAWYERS PRESS, INC., 165 William St., N. Y. C.; 'Phone: BEckman 3-2300